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FEDERAL COMMUNICATIONS COMMISSION
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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of)

Implementation of the)
Pay Telephone Reclassification)
and Compensation Provision of)
the Telecommunications Act of)
1996)

CC Docket No. 96-128

Policies and Rules Concerning)
Operator Service Access and)
Pay Telephone Compensation)

CC Docket No. 96-128
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OPPOSITION TO PETITIONS FOR RECONSIDERATION

MCI TELECOMMUNICATIONS CORPORATION

Mary J. Sisak
Donald J. Elardo
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-2605

Dated: October 28, 1996

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SUMMARY

MCI opposes the following aspects of the petitions for reconsideration in this proceeding.

1. The Commission must deny APCC's request that IXCs should be required to notify the PSP 30 days in advance before blocking calls.
2. The Commission must reject the request of the Inmate Calling Services Providers Coalition for compensation of \$.90 per call from inmate phones.
3. The Commission should reconsider its Order and reject the petition of BellSouth concerning compensation for 0+ calls and of the RBOC Coalition requesting compensation for 0+ calls from inmate phones.
4. The Commission must reject the petition of PCI and allow carriers to flow-through the compensation charge to specific 800 users.
5. The Commission must deny BellSouth's petition and prohibit BOCs from reselling interLATA service from payphones until they have authority under Sections 271 and 272. BOCs also should not be able to brand interstate calls from payphones.

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OPPOSITION TO PETITIONS FOR RECONSIDERATION

MCI Telecommunications Corporation (MCI) hereby opposes certain petitions requesting reconsideration of the Commission's Order¹ implementing Section 276 of the Communications Act concerning payphone regulation and compensation, as discussed below.

I. INTRODUCTION

As demonstrated by MCI and others, the Commission's Order adopting what the Commission characterizes as a market-based compensation amount is seriously flawed because it departs from prior Commission precedent; it fails to fulfill the Commission's duty to protect the public interest by safeguarding consumers from excessive charges; and there is no effective market when compensation for access code and subscriber 800 calls is imposed on carriers that neither make the decision to use the payphone, nor have the ability to avoid the charge. Thus, the

¹ Implementation of the Pay Telephone Reclassification and Compensation Provision of the Telecommunications Act of 1996, Report and Order, CC Docket Nos. 96-128 and 91-35, FCC 96-388 (released September 20, 1996).

Commission must reconsider its Order and prescribe a cost-based compensation amount. The record demonstrates that cost-based compensation should be between \$0 and \$.083 per call.

MCI opposes the petitions that ask the Commission to go even further in mandating unfair and unjust compensation. The specific issues and petitions that MCI opposes are discussed below.

II. CARRIER'S ABILITY TO BLOCK CALLS

The American Public Communication's Council (APCC) asks the Commission to require carriers that intend to block calls from payphones to inform payphone service providers (PSPs) 30 days in advance of blocking so that the PSP can take steps to avoid customer confusion and the disruption of business. APCC also requests that carriers should be required to provide an announcement that the carrier refuses to accept the call from the phone and that the phone is not malfunctioning.²

The Commission must deny the request to require notice to the PSP before blocking because it is inconsistent with the Commission's Order and justification for a market-based rate. The Commission found that a market-based rate is appropriate, in part, because a carrier can avoid the compensation if it determines that the amount (which, ultimately, will be the local coin rate set by the PSP) is unacceptable. Adoption of APCC's proposal would mean that carriers could not avoid compensation, at least for 30 days, and would be forced to pay a compensation amount that may not be acceptable. Clearly, such forced payment cannot be justified in a market-based compensation environment.

² APCC Petition at 3.

The Commission also should reject APCC's request that carriers should be required to announce to the caller that the carrier is blocking the call. As an initial matter, there is no need for this announcement because the caller will hear the dial-tone and, presumably, the caller will be able to place other calls from the phone. Therefore, the caller will know that the phone is in working order.

In addition, the proposed announcement may not be accurate. For example, for a subscriber 800 call, it could be the decision of the 800 customer to refuse to accept calls from payphones. Therefore, although the carrier may actually perform the blocking, it would be the 800 customer who refuses to accept the call.

Such a requirement also would unnecessarily interfere with the carrier's relationship with its customer. Specifically, with respect to access code calls, it should be up to the carrier to decide how and when it communicates to its customer. In addition, it would not be appropriate under any circumstance to require carriers to make representations about unaffiliated PSPs.

III. INMATE-ONLY PHONES

The Commission must reject the request of the Inmate Calling Services Providers Coalition (ISP Coalition) that the Commission order compensation of \$.90 per call to be paid to PSPs providing phones for inmates in prisons. The ISP Coalition argues that the Commission was wrong in not prescribing compensation because it could lead to a double recovery of costs already recovered in inmate calling transmission rates and operator service surcharges. Further, the ISP Coalition argues that compensation in the amount of \$.90 per call is necessary because of the higher costs involved in providing inmate services.

As recognized by the ISP Coalition and the Commission, the provision of inmate-only phones involves special circumstances. For example, in many correctional facilities, inmates can place only 0+ calls-- access code and 800 subscriber calls cannot be placed from inmate-only phones. In addition, correctional facilities contract with operator service providers and payphone providers for the provision of services for inmates. Therefore, through the contract process, a PSP clearly has notice that the phones will be used for 0+ calls and clearly has the opportunity to ensure that it receives fair compensation for the use of its phones for those calls. Accordingly, as with 0+ calls, there is no need for the Commission to prescribe any compensation for calls from these phones.

IV. COMPENSATION FOR 0+ CALLS FROM BOC PAYPHONES

The Commission must reconsider its Order and reject the petition of BellSouth in which it asks the Commission to clarify that the LECs will be entitled to receive compensation for 0+ calls once they have removed all subsidies for payphone service from their rates as long as they do not otherwise receive compensation for originating 0+ calls.³ The Commission also must reject the request of the RBOC Coalition that compensation for 0+ calls be extended to BOC inmate-only phones.⁴

As demonstrated by MCI, in the case of BOC payphones, the IXC has a contractual relationship with the location provider for the routing of 0+ calls from the payphones on its premises to the IXC for an agreed upon amount of compensation. The Act clearly establishes that

³ BellSouth Petition at 6.

⁴ RBOC Coalition Petition at 3-6.

the location provider has the right to select the presubscribed carrier for payphones on its premises. The Act further establishes that nothing in the Act “shall affect any existing contracts between location providers and ...interLATA and intraLATA carriers that are in force and effect as of the date of enactment of the Telecommunications Act of 1996.”⁵ Thus, by contract, IXC are entitled to receive 0+ calls from the payphones. The Commission’s Order, which would require IXCs to also pay compensation to the BOC for 0+ calls, interferes with this relationship. Moreover, it clearly forces IXCs to pay more compensation for 0+ calls than they have agreed to -- contrary to the Commission’s rationale for a market-based compensation mechanism.

V. CARRIERS’ ABILITY TO FLOW-THROUGH CHARGES

The Commission must reject the petition of the Personal Communications Industry (PCI) to the extent that it asks the Commission to require IXCs to spread the costs of compensating PSPs across all 800 users. PCI argues that its request is necessary because 800 carriers may not be able to bill their customers to compensate payphone owners on a per-call basis and “individual 800 number users would be subjected to per-call charges despite the fact they cannot refuse to accept calls from payphones.”⁶

In the Order, the Commission states that carriers can recover the charge for compensation from their customers in the manner they deem appropriate, and there is no reason to depart from this position. Moreover, the Commission consistently has found that costs should be recovered from the cost causer, which, in the case of payphone compensation, is the consumer who makes a

⁵ 47 USC Section 276(b)(3).

⁶ PCI Petition at 10.

call from a payphone or who accepts a call from a payphone. Accordingly, there is no policy or public interest reason to require the recovery of the compensation charge as requested by PCI.

To enable carriers to flow-through the compensation charge, however, the Commission must require LECs to provide as part of ANI the information digit "70" for non-LEC payphones and "27" for LEC payphones so that carriers can identify calls from payphones on a real-time basis. The real-time provision of this information also would enable 800 customers to either block calls from payphones or flow-through the charge for such calls as they deem appropriate.

VI. RESALE OF TOLL AND BRANDING

BellSouth requests reconsideration or clarification of the Order concerning the resale and branding of operator services from payphones. Specifically, BellSouth argues the BOCs should be able to resell interexchange service from payphones and, at a minimum, BOCs should be able to brand interstate operator services calls from their phones.⁷ BellSouth alleges that non-BOC PSPs are able to co-brand calls and, therefore, this right must be extended to the BOCs.⁸

The Commission must reject BellSouth's requests because they are inconsistent with the Act and the public interest. Clearly, BOCs cannot provide interLATA service from their in-region payphones until they are authorized to do so under Sections 271 and 272 of the 1996 Act and have met the dialing parity requirements of Sections 251(b)(3) and 271(c)(2)(B) of the 1996 Act.

With respect to branding, the Communications Act requires an operator services provider

⁷ BellSouth Petition at 22.

⁸ BellSouth Petition at 24.

(OSP) to identify itself to the consumer at the beginning of a call and before a charge is incurred.⁹

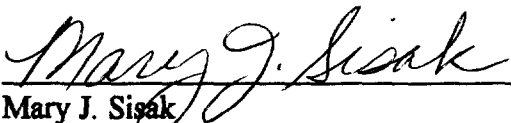
The purpose of this requirement is to provide notice to the consumer concerning the identity of the OSP so that the consumer can choose not to use that OSP's service. Since the BOC PSP clearly cannot be the OSP for interstate services before it has obtained such approval, it would be misleading and confusing to the consumer to allow BOCs to brand or co-brand interstate OSP calls.

VII. CONCLUSION

Based on the foregoing, MCI respectfully requests that the Commission reject the petitions for reconsideration or clarification discussed herein.

Respectfully submitted,

MCI TELECOMMUNICATIONS CORPORATION

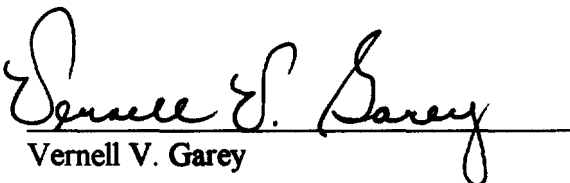
By: 
Mary J. Sisak
Donald J. Elardo
1801 Pennsylvania Avenue, N.W.
Washington, D.C. 20006
(202) 887-2605

Dated: October 28, 1996

⁹ 47 USC Section 226(b)(1)(A).

CERTIFICATE OF SERVICE

I, Vernell V. Garey, do hereby certify that a true copy of the foregoing "Opposition" in CC Docket No. 96-128 was served on October 28, 1996 by first class mail, postage prepaid, upon the following:


Vernell V. Garey

***HAND-DELIVERED**

International Transcription Service*
1919 M Street, N.W., Room 214
Washington, D.C. 20554

Leon M. Kestenbaum
Jay C. Keithley
H. Richard Juhnke
Sprint Corporation
1850 M Street, N.W., 11th Floor
Washington, D.C. 20036

Roy L. Morris
Director
Frontier Corporation
1990 M Street, N.W., Suite 500
Washington, D.C. 20036

Michael Shortley
Frontier Corporation
180 South Clinton Avenue
Rochester, NY 14646

David Gorin, President
National Association of RV Parks
& Campgrounds
8605 Westwood Center Drive
Suite 201
Vienna, VA 22182-2231

Kevin Maher, Director
Governmental Affairs
American Hotel & Motel Association
1201 New York Avenue, N.W., Suite 600
Washington, D.C. 20005-3917

Jeanie Ray, Manager
Regulatory Affairs
Communications Central Inc.
1150 Northmeadow Parkway, Suite 118
Roswell, GA 30076

Hank Smith
Independent Technologies, Inc.
11422 Miracle Hills Drive
Omaha, NE 68154

Derek Blake, Financial Manager
American Airlines Admirals Club
PO Box 619616, MD 2645
Dallas Fort Worth Airport, TX 75261-9616

Charles M. Barclay, A.A.E.
President
American Association of Airport Executives
4212 King Street
Alexandria, VA 22302

Bryan Peterson
Assistant Vice President
Franchisee Services
Kampgrounds of America, Inc.
P.O. Box 30558
Billings, MT 59114

Joseph Kelley
Flying J Inc.
P.O. Box 678
Brigham City, UT 84302-0678

E.M. Thurmond, A.A.E.
Airport Director
Yuma International Airport
2191 E. 32nd Street
Yuma, AZ 85365

James A. Thelen, Director
Operations Support Services
The Cleveland Clinic Foundation
9500 Euclid Avenue
Cleveland, OH 44195

Robert M. Lynch
Durward D. Dupre
Mary W. Marks
SouthwesternBell Telephone Company
One Bell Center, Room 3536
St. Louis, MO 63101

Jeffrey P. Fegan, Executive Director
Dallas/Fort Worth International Airport
3200 East Airfield Drive
Post Office Drawer 619428
DFW Airport, TX 75621-9428

W. Dewey Clower
President & CEO
NATSO, Inc.
1199 North Fairfax Street, Suite 801
P.O. Box 1285
Alexandria, VA 22313-1285

Robert M. Brill, Esq.
Law Offices of Robert M. Brill
757 Third Avenue, 12th Floor
New York, NY 10017

John M. Goodman
Bell Atlantic Telephone Companies
1133 20th Street, N.W.
Washington, D.C. 20036

Cynthia B. Miller
Associate General Counsel
State of Florida
Public Service Commission
Capital Circle Office Center
2540 Shumard Oak Blvd.
Tallahassee, FL 32399-0850

George E. Young
Associate General Counsel
State of Vermont
Public Service Board
Chittenden Bank Bldg., 4th Floor
112 State Street
Montpelier, VT 05620-2701

Paula Mueller
Secretary of the Commission
Public Utility Commission of Texas
7800 Shoal Creek Boulevard
Austin, TX 78757-1098

William H. Smith, Jr., Chief
Bureau of Rate and Safety Evaluation
Iowa Utilities Board
Lucas State Office Building
Des Moines, IA 50319

James O'Hern, Esq.
Assistant Deputy Public Advocate
State of New Jersey
31 Clinton Street, 11th Floor
P.O. Box 46005
Newark, NJ 07101

John D. Solomon, A.A.E.
Director of Aviation
City of Kansas City
601 Brasilia Avenue
P.O. Box 20047
Kansas City, MO 64195

Robert E. Cohn
Alexander Van der Bellen
Shaw, Pittman, Potts & Trowbridge
2300 N Street, N.W.
Washington, D.C. 20037

Mary E. Burgess
Assistant Counsel
State of New York Department of Public
Service
Three Empire State Plaza
Albany, NY 12223-1350

Edward C. Addison
Director
Commonwealth of Virginia
P.O. Box 1197
Richmond, VA 23209

Maribeth D. Snapp
Deputy General Counsel
Oklahoma Corporation Commission
P.O. Box 52000-2000
Oklahoma City, OK 73152

Martin Cintron, Salvador Uy
Gary S. Lutzker, Harley Goldstein
New York City Department of Information
Technology and Telecommunications
11 Metrotech Center, Third Floor
Brooklyn, NY 11201

Stephanie M. Phillipps
Arnold & Porter
555 Twelfth Street, N.W.
Washington, D.C. 20004-1202

Terrence J. Buda, Assistant Counsel
Veronica A. Smith, Deputy Chief Counsel
John F. Povilaitis, Chief Counsel
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

C. Douglas McKeever
Vice President - Finance
Communications Central Inc.
1150 Northmeadow Parkway, Suite 118
Roswell, GA 30076

Judith St. Ledger-Roty
Enrico C. Soriano
Wendy I. Kirchick
REED SMITH SHAW & McCLAY
1301 K Street, N.W., Suite 1100
East Tower
Washington, D.C. 20005-3317
Counsel for The Intellicall Companies
and Paging Network, Inc.

Teresa Marrero
Senior Regulatory Counsel
Teleport Communications Group Inc.
Two Teleport Drive, Suite 300
Staten Island, NY 10301

Angela B. Green
General Counsel
Florida Public Telecommunications
Association
125 South Garden Street, Suite 200
Tallahassee, FL 32301

Glenn Stehle
Call West Communications Inc.
701 N. St. Mary's
San Antonio, TX 78205

John F. Beach, P.A.
1400 Main Street, Suite 1207
Post Office Box 444
Columbia, SC 29202-0444

Clifton Craig, Jr., President
South Carolina Public Communications
Association
1132 S. Center Road
Darlington, SC 29532

Actel, Inc.
P.O. Box 391
Cedar Knolls, NJ 07927

Willard C. Reine
314 East High Street
Jefferson City, MO 65101
Counsel for the Midwest Independent
Coin Payphone Association

Roger B. Skrypczak, President
Wisconsin Public Communications
Association
W6246 County Trunk BB
Suite B
Appleton, WI 54915

Newton M. Galloway
113 Concord Street
Zebulon, GA 30295
Attorney for Georgia Public
Communications Association

Albert H. Kramer
Robert F. Aldrich
Dickstein, Shapiro, Morin &
Oshinsky, L.L.P.
2101 L Street, N.W.
Washington, D.C. 20037-1526

Sondra J. Tomlinson
U.S. West, Inc.
1020 19th Street, N.W., Suite 700
Washington, D.C. 20036

E. Ashton Johnston
Paul, Hastings, Janofsky & Walker
1299 Pennsylvania Avenue, N.W.
10th Floor
Washington, D.C. 20004-2400
Attorneys for Arch Communications
Group, Inc.

Mark J. Golden
Vice President - Industry Affairs
Personal Communications Industry
Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561

Katherine M. Holden
Stephen J. Rosen
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006
Attorneys for Personal Communications
Industry Association

Eric L. Bernthal
Michael S. Wroblewski
Latham & Watkins
1001 Pennsylvania Avenue, N.W., Suite
1300
Washington, D.C. 20004
Attorneys for Peoples Telephone Company,
Inc.

Bruce W. Renard, General Counsel
Peoples Telephone Company, Inc.
2300 N.W. 89th Place
Miami, FL 33172

Butzel Long
William R. Ralls
Leland R. Rosier
118 West Ottawa Street
Lansing, MI 48933
Attorneys for Michigan Pay Telephone
Association

Patricia A. Hahn
General Counsel
Airports Council International
North America
1775 K Street, N.W., Suite 500
Washington, D.C. 20006

Charles H. Kennedy
Morrison & Foerster
2000 Pennsylvania Avenue, N.W.
Washington, D.C. 20006-1888
Counsel for Airports Council
International - North America

G. Slaby, Manager
Telecommunications Services
Truckstops of America
24601 Center Ridge Road, Suite 300
Westlake, OH 44145-5634

John M. Bisinger
AHA TelePlan
515 North State Street
Suite 2850
Chicago, IL 60610

Catherine R. Sloan
Richard C. Fruchterman
LDDS WorldCom
1120 Connecticut Avenue, N.W.
Suite 400
Washington, D.C. 20036

Douglas F. Brent
LDDS WorldCom
9300 Shelbyville Road
Suite 700
Louisville, KY 40222

J. Christopher Dance
Vice President, Legal Affairs
EXCEL Telecommunications, Inc.
8750 North Central Expressway
20th Floor
Dallas, TX 75231

Thomas K. Crowe
Law Offices of Thomas K Crowe, P.C.
2300 M Street, N.W., Suite 800
Washington, D.C. 20037
Counsel for EXCEL Telecommunications,
Inc.

Susan Drombetta, Manager
Rates and Tariffs
SCG Carrier Services Inc.
575 Scherers Court
Worthington, OH 43085

Richard McKenna, HQE03J36
GTE Service Corporation
P.O. Box 152092
Irving, TX 75015-2092

David J. Gudino
GTE Service Corporation
1850 M Street, N.W., Suite 1200
Washington, D.C. 20036

Mitchell F. Brecher
Fleischman and Walsh, L.L.P.
1400 Sixteenth Street, N.W.
Washington, D.C. 20036
Counsel for Oncor Communications, Inc.

Rachel J. Rothstein
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Charles C. Hunter
Hunter & Mow, P.C.
1620 I Street, N.W., Suite 701
Washington, D.C. 20006
Counsel for The Telecommunications
Resellers Association

Thomas J. MacBride, Jr.
Kathryn A. Fugere
Goodin, MacBride, Squeri, Schlotz
& Ritchie, L.L.P.
505 Sansome Street, Suite 900
San Francisco, CA 94111
Attorneys for the California Association
of Long Distance Telephone Companies

Joe D. Edge
Sue W. Bladek
Drinker, Biddle & Reath
901 Fifteenth Street, N.W.
Washington, D.C. 20005
Attorneys for Puerto Rico Telephone
Company

Paul J. Berman
Alane C. Weixel
Covington & Burling
1201 Pennsylvania Avenue, N.W.
P.O. Box 7566
Washington, D.C. 20044-7566
Attorneys for Anchorage Telephone Utility

David Cosson
National Telephone Cooperative Association
2626 Pennsylvania Avenue, N.W.
Washington, D.C. 20037

Robert Caprye, Consulting Manager
GVNW, Inc./Management
7125 S.W. Hampton Street
Portland, OR 97223

M. Robert Sutherland
Theodore R. Kingsley
BellSouth Corporation
1155 Peachtree Street, N.E.
Atlanta, GA 30309-3610

Mary McDermott
Charles D. Cosson
United States Telephone Association
1401 H Street, N.W., Suite 600
Washington, D.C. 20005

Mark C. Rosenblum
Peter H. Jacoby
Richard H. Rubin
AT&T
295 North Maple Avenue, Room 3244J1
Basking Ridge, NJ 07920

Michael K. Kellogg
Jeffrey A. Lamken
Kevin J. Cameron
Kellogg, Huber, Hansen, Todd
& Evans
1301 K Street, N.W., Suite 1000 West
Washington, D.C. 20005

Alan N. Baker
Ameritech
2000 West Ameritech Center Drive
Hoffman Estates, IL 60196

Genevieve Morelli
Vice President and General Counsel
The Competitive Telecommunications
Association
1140 Connecticut Avenue, N.W., Suite 220
Washington, D.C. 20036

Vicki Oswalt
Director, Office of Policy Development
Public Utility Commission of Texas
1701 N. Congress Avenue
P.O. Box 13326
Austin, TX 78711-3326

Danny E. Adams
Steven A. Augustino
Kelley Drye & Warren LLP
1200 Nineteenth Street, N.W., Suite 500
Washington, D.C. 20036

Peter Arth, Jr.
505 Van Ness Avenue
San Francisco, CA 94102
Attorneys for the Public Utilities
Commission of the State of California

Martin A. Mattes
Graham & James
One Maritime Plaza, Suite 300
San Francisco, CA 94111
Attorneys for California Payphone
Association

Stanley W. Fox, Attorney for the
Alabama Public Service Commission
Post Office Box 991
Montgomery, AL 36101-0911

Maureen O. Helmer
General Counsel
State of New York Department of
Public Service
Three Empire State Plaza
Albany, NY 12223-1350

David M. Kaufman
General Counsel
New Mexico State Corporation
Commission
P.O. Drawer 1269
Santa Fe, NM 87504

Michael A. McRae
Assistant People's Counsel
Office of the People Counsel
District of Columbia
1133 15th Street, N.W., Suite 500
Washington, D.C. 20005-2710

Eric A. Eisen
Counsel for the Indiana Utility
Regulatory Commission
Eisen Law Office
10028 Woodhill Road
Bethesda, MD 20817

Johnlander Jackson-Forbes
Assistant Attorney General
Public Utilities Section
180 East Broad Street
Columbus, OH 43266-0573

Janee Briesemeister
Senior Policy Analyst
Consumers Union
1300 Guadalupe, Suite 100
Austin, TX 78701-1643

Judith St. Ledger-Roty
Enrico C. Soriano
Wendy I. Kirchick
Reed Smith Shaw & McClay
1301 K Street, N.W.
Suite 1100 - East Tower
Washington, D.C. 20005-33317

B. Reid Presson, Vice President
Regulatory Affairs
The Intellicall Companies
2155 Chenault, Suite 410
Carrollton, TX 75006-5023

David L. Hill
Audrey P. Rasmussen
O'Connor & Hannan, L.L.P.
1919 Pennsylvania Avenue, N.W.
Suite 800
Washington, D.C. 20006-3483

John D. Lee, Senior Corporate Attorney
Budget Rent a Car Corporation
4225 Naperville Road
Lisle, IL 60532-7502

Mark A. Stachiw
AirTouch Paging
12221 Merit Drive, Suite 800
Dallas, TX 75251

Danny E. Adams
Steven A. Augustino
KELLEY DRYE & WARREN, LLP
1200 Nineteenth Street, N.W., Suite 500
Washington, D.C. 20036

Rachel J. Rothstein
Cable & Wireless, Inc.
8219 Leesburg Pike
Vienna, VA 22182

Christopher G. McCann
Vice President
1-800-FLOWERS
1600 Stewart Avenue
Westbury, NY 11590

Stanley W. Foy
Alabama Public Service Commission
Post Office Box 991
Montgomery, AL 36101-0991

Susan Stevens Miller
Assistant General Counsel
Maryland Public Service Commission
6 Saint Paul Street
Baltimore, MD 21202

Joel B. Shifman, Esquire
State of Maine
Public Utilities Commission
18 State House Station
Augusta, Maine 04333-0018

George E. Young, Esq.
Vermont Public Service Board
112 State Street, Drawer 20
Montpelier, VT 05620-2701

Dennis C. Linken
Stryker, Tams & Dill
Two Penn Plaza East
Newark, NJ 07105

Robert L. Hoggarth
Senior Vice President
Paging and Narrowband
Personal Communications Industry
Association
500 Montgomery Street, Suite 700
Alexandria, VA 22314-1561

R. Michael Senkowski
Katherine M. Holden
Stephen J. Rosen
Wiley, Rein & Fielding
1776 K Street, N.W.
Washington, D.C. 20006

Andrew J. Phillips
Yakes, Bauer, Kindt & Phillips, S.C.
141 North Sawyer Street
P.O. Box 1338
Oshkosh, WI 54902-1338
Counsel for Wisconsin Pay Telephone
Association, Inc.